

REMARKS

This Response is submitted in reply to the final Office Action dated October 10, 2006. Claims 1-16 and 23-28 are pending in the present application. Claim 29 is added by this response. No new matter is introduced by this amendment.

Prompt and favorable action is respectfully solicited.

Improper Final Rejection

Applicant submits that the finality of this rejection is improper and respectfully requests that the finality of this Office Action be reconsidered and withdrawn.

For claims of an application to be finally rejected following an RCE, all claims must be drawn to the same invention claimed in the earlier application and would have been properly finally rejected on the grounds and art of record in the next Office Action if they had been entered in the application prior to entry under 37 CFR §1.114. MPEP §706.07(h) VIII.

Applicant submits that this application does not meet the requirements as set forth by the MPEP. Specifically, newly added claims 26-28 would not have been properly finally rejected on the grounds and art of record. The prior art does not disclose, teach or suggest a corneal flap that forms a substantially three hundred sixty degree arc around the main optical axis, as recited in dependent claim 26, a second flap, as recited in claim 27 or an arc that is at least approximately ninety degrees around the main optical axis, as recited in claim 28.

In fact, these elements of the claims are not even addressed substantively in the Office Action. Therefore, Applicant requests that the finality of this Office Action be withdrawn.

Double Patenting Rejections

Claims 1-9 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-31 of U.S. Patent No. 6,264,648 to Peyman.

The Office Action contends that claims 1-9 are obvious in view of this patent. Applicant respectfully disagrees.

Independent claim 1 recites, among other things, forming a corneal flap using a laser, a portion of which remains attached to the cornea by an area located at the main optical axis and the flap having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. Claim 1 also recites

introducing an ocular implant in between the first and second internal surfaces of the corneal flap. The '648 Peyman patent does not disclose, teach or suggest these elements.

The Office Action suggests that the '648 Peyman patent requires elements A, B, C and D, while this application only requires elements A, B and C. Applicant respectfully disagrees. While Applicant admits that claim 13 the '648 Peyman patent claims separating the cornea into first and second surfaces, ablating one of these surfaces and then recombining the surfaces, Applicant disagrees that the present application has no more elements than those stated above for the '648 Peyman patent.

First, claim 1 requires firing a laser to form a flap. The '648 does not disclose, teach or suggest forming the corneal flap using a laser. The '648 Peyman patent claims and discloses the use of a laser to ablate portions of the exposed corneal surface to alter the refractive properties of the eye. The '648 Peyman patent does not even remotely suggest that such a laser or any type of laser can be used to form the flap. The Flap is formed in the '648 Peyman patent via a cutting means, such as a scalpel.

This is an additional elements E, that is not claimed, disclosed or suggested by the '648 Peyman patent.

Second, claim 1 of this application requires introducing an ocular implant in between the first and second internal surfaces. There is no such implant claimed, disclosed or suggested in the '648 Peyman patent. At best, the '648 Peyman patent teaches coagulating points at the end of a tunnel; however, this is clearly not 1) forming a flap; or 2) inserting an implant between the surfaces of the flap.

This is an additional element F that is not claimed, disclosed or suggested by the '648 Peyman patent.

Third, claim 1 of this application requires the formation of a corneal flap, a portion of which remains attached to the cornea by an area located at the main optical axis. There is no such type of flap disclosed or suggested by the '648 Peyman patent.

This is an additional element G that is not claimed, disclosed or suggested by the '648 Peyman patent.

Independent claims 2, 8, 12, 21 and 22 in the '648 Peyman patent are drawn to modifying the cornea by accessing a cavity via a "relatively small opening" and are clearly not flaps as

claimed in independent claim 1 of the present application. Furthermore, these claims and their dependent claims lack the same elements as claim 1 of the '648 Peyman patent.

Therefore, Applicant submits that independent claim 1 and its dependent claims are allowable for at least these reasons over the '648 Peyman patent.

Claims 10-16 and 23-28 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-31 of the '648 Peyman patent in view of U.S. Patent No. 4,729,372 to L'Esperance, Jr.

The L'Esperance patent does not overcome the deficiencies of the '648 patent. The L'Esperance patent discloses a method of ablating the cornea. The L'Esperance method ablates the surface of the cornea and does not form a flap of any kind, let alone a corneal flap having a portion which remains attached to the cornea by an area located at the main optical axis or having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. Furthermore, the L'Esperance patent does not disclose, teach nor suggest introducing an implant between first and second internal surfaces.

Further, with respect to claims 26 and 28, neither the '648 patent nor L'Esperance discloses or suggests that the peripheral edge of the corneal flap forms a substantially three hundred sixty degree arc or a ninety degree around the main optical axis. These elements are not even addressed in the present Office Action.

For at least the above reasons, Applicant respectfully submits that independent claim 1 and its dependent claims 2-12 and 26-29 are allowable over each of these patents alone or in combination.

Independent claims 13 and 23 and their respective dependent claims are allowable for similar reasons as those discussed for independent claim 1. That is, each of these claims recites a flap having a portion which remains attached to the cornea by an area located at the main optical axis, and a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. Additionally, as with independent claim 1, each of those claims requires introducing an implant between the exposed surfaces. These elements are not disclosed taught or suggested by either the '648 patent or the L'Esperance patent.

New Claim 29

New dependent claim 29 is allowable over the cited art because claim 29 recited that the step of lifting the corneal flap includes lifting the corneal flap, such that an angle is formed between at least a portion of the first internal surface and a portion of the second internal surface, the angle being at least 30 degrees and extending from about the area located at the main optical axis and toward the peripheral edge. Such a step is not disclosed, taught or suggested in the cited art.

In view of the foregoing comments and amendments, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the number indicated below. The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

Respectfully submitted,

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BY



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